

EXHIBIT A-1



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MDL No. 1358 (SAS)

**In Re: Methyl Tertiary Butyl Ether
("MTBE") Products Liability Litigation**

**PLAINTIFFS' RESPONSES TO
DEFENDANTS' FIRST SET OF
CONTENTION
INTERROGATORIES**

This Document Relates To:

*New Jersey Dep't of Env'tl. Prot., et al. v.
Atlantic Richfield Co., et al., No. 08 Civ. 312*

Plaintiffs, the New Jersey Department of Environmental Protection ("NJDEP"), the Commissioner of the New Jersey Department of Environmental Protection, and the Administrator of the New Jersey Spill Compensation Fund ("Plaintiffs"), by and through their attorneys, respond to Defendants' First Set of Contention Interrogatories (the "Contention Interrogatories") as follows:

GENERAL OBJECTIONS

1. Plaintiffs object to the Contention Interrogatories to the extent they seek information or documents outside the scope of discovery permissible under the Federal Rules of Civil Procedure.
2. Plaintiffs object to the Contention Interrogatories to the extent they seek information covered by the Attorney-Client Privilege, the Work Product Doctrine, or any other applicable privilege or immunity, including but not limited to the Deliberative Process Privilege or Executive Privilege. Plaintiffs' responses are not intended as, nor should they be construed as, a waiver or relinquishment of any part of

Such information is subject to all objections regarding relevance, authenticity, materiality, propriety, admissibility and any other objections that would require exclusion of the information if such information were offered as evidence at trial, all of which objections are hereby expressly reserved and may be interposed at the time of trial.

9. Plaintiffs object to the Contention Interrogatories to the extent they seek information that is confidential, sensitive, proprietary or subject to privacy restrictions. Plaintiffs respond on the condition that the inadvertent production of information or documents that are confidential, sensitive or private information does not waive Plaintiffs' right to protect this information and to seek recovery of any such information or documents that are inadvertently produced.

10. Plaintiffs' General Objections apply to each of the Contention Interrogatories as though restated in full therein.

RESPONSES TO CONTENTION INTERROGATORIES

INTERROGATORY NO. 1:

Identify the Defendants YOU contend caused the alleged DAMAGES at each of the DELINEATED TRIAL SITE AREAS at issue in this action.

RESPONSE TO INTERROGATORY NO. 1:

Subject to and without waiving its objections, Plaintiffs respond as follows:

Plaintiffs' Trial Sites

1. Skyline Service Center: Site ID No. 2156.

Sunoco; Texaco; Shell; Citgo.

2. **Valero/APCO: Site ID No. 4476.**

Valero; Mobil; ExxonMobil.

3. **Getty: Site ID No. 6187.**

Chevron; Texaco; Getty Properties Corporation; Getty Petroleum and Marketing, Inc. (GPMI); Texaco; Hess.

4. **Exxon: Site ID No. 8857.**

ExxonMobil.

5. **Sunoco: Site ID No. 9224.**

Sunoco.

6. **Maple Shade CITGO: Site ID No. 10792.**

Hess; Citgo.

7. **Baker's Waldwick Gulf: Site ID No. 11126.**

Gulf Oil Ltd. Partnership (GOLP); Cumberland Farms.

8. **Shell Ridgewood: Site ID No. 11346.**

Shell.

9. **5 Points BP: Site ID No. 15442.**

Citgo; BP.

10. **HP Delta: Site ID No. 41958.**

Getty, Texaco, BP, Citgo; ConocoPhillips.

Defendants' Trial Sites:

1. **Tinton Falls Boro DPW Facility: Site ID No. 4215.**

See Response to Interrogatory No. 2 re Tinton Falls.

2. **Leonardo State Marina: Site ID No. 4318.**

Citgo; Coastal.

See also Response to Interrogatory No. 2 re Leonardo State Marina.

3. **Colts Neck DPW Garage: Site ID No. 4729.**

See Response to Interrogatory No. 2 re Colts Neck PDW Garage.

4. **NJDOT W. Orange Maintenance Yard: Site ID No. 8076.**

Gulf.

See also Response to Interrogatory No. 2 re NJDOT W. Orange Maintenance Yard.

5. **Camp Pedricktown WWTP: Site ID No. 13363.**

See Response to Interrogatory No. 2 re Camp Pedricktown WWTP.

6. **RC Cape May Holdings Corp.: Site ID No. 15814.**

See Response to Interrogatory No. 2 re RC Cape May Holdings Corp.

7. **Scarborough Office Tank: Site ID No. 42523.**

See Response to Interrogatory No. 2 re Scarborough Office Tank.

8. **Tamcrest Country Club: Site ID No. 59237.**

See Response to Interrogatory No. 2 re Tamcrest Country Club.

9. **NJ State Prison Bayside: Site ID No. NJ0609001.**

Coastal

See also Response to Interrogatory No. 2 re NJ State Prison Bayside.

INTERROGATORY NO. 2:

For each Defendant IDENTIFIED in YOUR response to Interrogatory No. 1, above, IDENTIFY all facts and all DOCUMENTS that YOU contend prove, establish, show or demonstrate that the particular Defendant caused the alleged DAMAGES at each DELINEATED TRIAL SITE AREA.

RESPONSE TO INTERROGATORY NO. 2:

Plaintiffs assert the general objections. Plaintiffs also object that this interrogatory calls for expert opinion, and expert reports are not yet due.

Notwithstanding and without waiving these objection, plaintiffs respond as follows.

As to all trial sites, the defendants associated with those sites were a substantial factor in causing contamination at the sites by supplying MTBE gasoline to the sites without proper warnings or instructions, and with knowledge that MTBE gasoline would escape from the UST's and dispenser systems and contaminate soil and groundwater. In addition, defendants maintained control over the supply and inventory of MTBE gasoline at the trial sites through branding and supply agreements, as well as through on-site inspections and control of amounts and methods of delivery. At some trial sites, as described below, defendants also owned or leased the property, underground storage tanks and dispensing equipment, and are managing on-site remediation. In addition,

plaintiffs refer to and incorporate Plaintiffs' Response to Interrogatory No. 3, *infra*. As to each trial site, Plaintiffs respond as follows:

1. **Skyline Service Center: Site ID No. 2156.**

Sunoco supplied MTBE to Skyline from November of 1985 to September 1991 pursuant to a branding agreement. (Sunoco Resp 2nd Rogs, nos. 5, 10; Deposition of Joseph Costello ("Costello Depo") at 26:20-28:15 and Exhs. 2, 9.). *See also* Sunoco Response to CMO 45. Station owner Joe Costello testified that prior to the requirement of over-fill containment sumps, Sunoco commonly spilled approximately 10 gallons of gasoline each time it delivered gasoline to the station. (Costello Depo. at 41:3-42:20 and Exh. 8.) Mr. Costello testified that the amount of product spilled by Sunoco came to approximately 1,300 gallons over time. (*Id.*)

Texaco supplied MTBE gasoline to Skyline from October 1991 to September 1997 pursuant to a branding agreement. (SKYLINE 003560; Costello Depo. at 52:5-54:3; 68:19-69:17; and Exhs. 10, 16.)

CITGO, through its agent, supplied MTBE gasoline to Skyline from November, 1997 to June, 2008, including from CITGO's Linden Terminal. (CITGO Supplemental Response to Plaintiffs' Second Interrogatories, No. 5; Costello Depo. at 76:10-24; CITGO-NJ-003331.) Citgo also conducted on-site, in-tank testing of its MTBE gasoline products at this site during this time period. (*Id.*)

MTBE was detected during the first tests for MTBE at Skyline, on May 13, 1998 at concentrations of 207 ppb. (SKYLINE002375-002376.) MTBE and TBA were detected in 16 of 18 domestic wells during a limited investigation conducted by the

Passaic County Department of Health in 1998. (NJ-LBG-07788-07789; NJDEP-SITE249-007146-007279.) Preliminary investigations identified Skyline as the likely source of the contamination. (*Id.*)

On or about August 5, 2003, three USTs and associated piping were removed at the Skyline station. (*Id.*) In addition to the discovery of contaminated soil, approximately 725 gallons of free product was observed floating on top of groundwater, and contaminated groundwater was observed flowing into the excavation from bedrock sidewalls. (NJDEP-SITE249-002219-002245; Costello Depo. at 95:6-97:11.) A broken containment sump was found at the time of removal. (*Id.*)

MTBE has continued to be detected at the Skyline station. MTBE was detected at the site at concentrations as high as 175 ppb in 2009. (NJDEP-SITE249-007146-007280.) MTBE was detected in potable wells near the Skyline station at levels as high as 360 ppb on June 18, 2004. (NJDEP-SITE249-002432-002433.) There are 95 potable wells within 1,000 feet of the impacted potable well. (*Id.*)

2. **Valero/APCO: Site ID No. 4476.**

Mobil had a branding agreement with this station from at least 1984 to 2004. (NJDEP-SITE620-000042; Deposition of Amar Singh Gill (“Gill Depo”) at 20:13-22; 34:10-35:11.) Mobil supplied MTBE gasoline to this station during this same time period. (*Id.*)

Valero had a branding agreement with this station from 2004 to the present. (VLO-NJ-00000005-40; Gill Depo. at 22:18-23:16; 30:25-32:13 and Exh. 4.) Valero supplied gasoline containing MTBE to the station during this time period. (*Id.*)

Soil contamination was suspected at this station following removal of tank piping on March 18, 2005. (NJDEP-SITE620-001666-001672.) Subsequent soil and groundwater analysis following installation of upgraded piping on or about June 29, 2005 revealed MTBE contamination at the site. (SOVCON00001-00002.)

MTBE was detected during the first tests for MTBE in 2005 at concentrations of 159,000 ppb. (SOVCON011339-011343.) MTBE has been detected at levels as high as 210,000 ppb on April 21, 2006. (SOVCON011555-011609.) TBA was detected at 54,000 ppb in MW-1 at the same time. (*Id.*)

3. Getty: Site ID No. 6187.

Texaco (now Chevron) owned this site and supplied it with MTBE gasoline prior to 1985. (Chevron Response to CMO 75; Deposition of Joshua Dicker (“Dicker Depo.”) at 12:25-15:2.)

Between 1985 and 1987 the site was owned by Power Test Realty Co., Ltd., an affiliate of Getty Properties. (Dicker Depo. at 12:25-15:2.)

GPMI owned the site from 1997 to 2006 and supplied MTBE gasoline to the site during this time period. (GPMI Response to CMO 75; Lukoil Response to CMO No. 75; Deposition of Dale Holden (“Holden Depo.”) at 26:23-27:9.)

MTBE was detected during the first tests for MTBE at this site at concentrations of 2,030,000 ppb on November 10, 2004. (Tyree 09898-09821.) Testing occurred after a failed product line test led to discovery of contaminated soil. (*Id.*; Holden Depo. at 73:10-77:10.) MTBE levels at this site have been as high as 9,920 ppb as recently as April 27, 2010. (Tyree 00516-00579.)

Plaintiffs' investigation is continuing as to the sources of gasoline released at site. Plaintiffs believe that Defendants have not been fully forthcoming in their responses as to this site. Plaintiffs are still evaluating those responses, and defendants' response to Requests for Admissions that are yet to be served may provide information to assist in identifying sources. Site specific expert analysis may be required to identify such sources and site specific expert reports are not yet due. Plaintiffs reserve their right to supplement this response after the completion of fact discovery and expert reports, including by invoking the commingled product theory of liability as necessary.

4. Exxon: Site ID No. 8857.

ExxonMobil and its predecessors have owned this site, including the USTs, from 1930 to the present. (ExxonMobil Response to CMO 75.) ExxonMobil also supplied MTBE gasoline to this site during all relevant time periods. (ExxonMobil Response to 2nd Rogs, No. 5; Deposition of Daniel Francis ("Francis Depo.") at 41:13-43:19).

MTBE was detected during the first testing for MTBE at this site at concentrations of 234,000 ppb. (XOM-NJDEP-REM-31310-051963-053515.) MTBE has been detected at levels as high as 234,000 ppb on July 1, 2003. (*Id.*)

In May 2001, a small drive-off spill was reported to the NJDEP. (NJDEP-SITE213-008450.) In November 2001, flex line repairs on a 10,000 gallon tank resulted in removal of a ton of contaminated pea gravel. (NJDEP-SITE213-00003.) Subsequent installation of monitoring wells revealed contamination of groundwater at levels described above.

5. Sunoco: Site ID No. 9224.

Sunoco has owned this site, including the USTs, from 1947 to the present. (Sunoco Response to CMO 75.) Sunoco supplied MTBE gasoline to this site during all relevant time periods. (Sunoco Response to CMO 45; Sunoco Response to 2nd Rogs).

Investigation of this site commenced following removal of a failed 1,000 gallon fuel oil tank on or about August 31, 1990, during which free product in a shallow puddle of groundwater and a strong odor of gasoline were observed. (NJDEP-SITE551-002822-002839.) Groundwater analysis began in March 1992, at which time MTBE was detected in all monitoring wells. (NJ-MTBE-GES-000308-000309.) MTBE was detected at concentrations of 798,824 ppb, on March 26, 1992. (NJDEP-SITE551-000282-000288; GES-NJ-BLOOMFIELD-002388-002450; SUN-MDL-NJ-061489-061545.) MTBE has been detected at levels as high as 1,900,000 ppb on December 29, 1998. (SUN-MDL-NJ-060517-060532.)

In December 1998, an increase in groundwater contamination suggested a new release. (NJDEP-SITE551-002097-002103; SUN-MDL-NJ-065431-065435.) In June 1999, Crompco discovered during regular tank testing that the primary regular tank was compromised with a bung hole within the upper 10%. (NJDEP-SITE551-0002036-0002059.)

Sunoco has admitted that MTBE releases occurred at this site, at least as early as 1992, when MTBE was initially identified. (Sunoco Response to Plaintiffs Second Interrogatories, No. 12; *see also* Deposition of Russell Hammond (“Hammond Depo.”) at 35:2-19.) Sunoco also acknowledges that Sunoco’s MTBE gasoline caused the groundwater contamination at their station. (Hammond Depo. at 44:20-45:12.)

6. Maple Shade CITGO: Site ID No. 10792.

Hess owned this site, including the USTs, from 1982 to 1997. (Hess Response to CMO 75.) Hess supplied MTBE gasoline to this site during this time period. (Hess Response to CMO 75; Hess Response to Plaintiffs' Second Interrogatories, No. 5.)

CITGO, through its agent, has had a branding agreement with this station from 1998 to the present. (CITGO Supplemental Response to Plaintiffs' Second Interrogatories, No. 5.) CITGO supplied MTBE gasoline to this station during this time period. (CITGO Supplemental Response to Plaintiffs' Second Interrogatories, No. 8.)

In 1989, during a site assessment, a release from a UST system was indicated at this site, and contaminated soil was report to the DEP. (HESS NJ 003113-003116.) MTBE was detected during first testing for MTBE at this site at concentrations of 55,200 ppb in 1992. On December 19, 2000, a gasoline release was reported, indicating a spill and soil contamination. (NJDEP-SITE289-003565-003572; EnviroTrac_000036-000045.) MTBE has been detected at levels as high as 1,020,000 ppb in 2001 and 124 ppb in 2011. (EnviroTrac_002059-002135.)

Hess has undertaken on site remedial activities at this station. (ASC000002-000172; ENVIROTRAC000081-000137.)

7. Baker's Waldwick Gulf: Site ID No. 11126.

At all relevant times this station has been branded as a Gulf station. Chevron owned the property and USTs at this site prior to 1986, and supplied MTBE gasoline to the site during this time period. (Chevron Texaco Supply Response to CMO 75.) Cumberland Farms purchased the license to use the Gulf Brand from Chevron in 1986.

(Deposition of Ronald Sabia (“Sabia Depo.”) at 30:22 - 31:1.) Cumberland Farms branded this station as a Gulf station from 1986 to 1993, when Cumberland entered into a joint venture with Gulf Oil Limited Partnership (GOLP) and assigned the right to use the Gulf license to GOLP. (*Id.* at 35:11 - 36:9.) The station was operated as a Gulf station until 2010, when GOLP acquired all rights, title and interest to the Gulf brand in the United States.

Cumberland Farms was recently added as a defendant in this case and has not yet provided the declaration required by CMO 75. Plaintiffs reserve the right to supplement this Response upon receipt of Cumberland Farm’s CMO 75 declaration.

Cumberland Farms has owned the property and the UST’s since at least 1992. (CFI-WALDWICK-005028.) During CFI’s ownership of the site GOLP supplied MTBE gasoline to the site. (Gulf’s Response to Plaintiffs’ Second Interrogatories Nos. 2, 4-6.) The site was also branded as a Gulf station during this time period. (Gulf’s Response to Plaintiffs’ Second Interrogatories No. 5, Citgo Supply Response to Second Interrogatories No. 8.)

In 1996, gasoline discharge from a UST was reported at this site. (NJDEP-SITE218-002852-002855.) MTBE was subsequently detected at concentrations of 81,000 ppb during the first testing for MTBE at this site. (CFI-WALDWICK-010871-011201.) MTBE has been detected at levels as high as 2,500,000 ppb in 1999. (*Id.*) In 1998, a leaking tank was reported. (CFI-WALDWICK-005190.) Again in 1998, a continuous UST release was reported. (NJDEP-SITE218-002709-002710.)

Cumberland Farms has undertaken on-site remediation at this station. (CFI-

WALDWICK-001785-001757; BES-MDL-NJ-018503-018564.)

8. Shell Ridgewood: Site ID No. 11346.

Shell leased this site in 1979 and has owned the site since 1985. (Shell Response to CMO 75; Shell Response to Plaintiffs' Second Interrogatories, Nos. 2, 9.) Shell has owned the USTs at the site since 1979. (*Id.*) Shell supplied MTBE gasoline to this site during all relevant time periods. (Shell Response to 2nd Rogs. Nos. 6, 8.)

A gasoline release was detected at this site in 1987, and inventory reconciliation documents indicated 2,098 gallons leaked from a UST. (SH-NJ-XX-049073; Jan. 24, 2011, Deposition of Buddy (LeRoy) Bealer ("Bealer Depo.") at 119:16-20.) MTBE was detected during the first testing for MTBE at this site at concentrations of 163,912 ppb in 1987. (Shell Response to Plaintiffs' Second Interrogatories, No. 12; SH-NJ-SCI133863-133938.) MTBE has been detected at levels as high as 4,500,000 ppb on November 21, 1995. (*Id.*)

In 1995, about 1,735 gallons were released from a defective flex connector. (SH-NJ-SCI439401-439420; SH-NJ-XX-046693-046694; Bealer Depo. at 120:8-22.) In 1998, the flex connector underneath the middle pump island was found to be leaking. (SH-NJ-XX-015503-015504; Bealer Depo. at 120:23-121:6.) In 2006, gasoline releases were again detected. (Shell Response to Plaintiffs' Second Interrogatories, No. 12; Bealer Depo. at 155:5-13.)

9. 5 Points BP: Site ID No. 15442.

CITGO, through its agent, had a branding agreement with this station between October of 1991 and June of 2001. (Citgo Responses to Plaintiffs' Second

Interrogatories, Nos. 5, 8; NJDEP-SITE595-00507, 02279, 02299.) CITGO supplied MTBE gasoline to the station during this period. (CITGO-NJ-002917-002931; 002932.)

BP has had a branding agreement with this station from 2001 to the present. (BP Response to Plaintiffs' Second Interrogatories, No 2.) BP supplied MTBE gasoline to the site during this time period. (*Id.*, Response Nos 3, 10; BP Supplemental Response Nos. 34, 36.)

Contamination was discovered at this site in 1995 during a boring sampling. (NJDEP-SITE595-005689-005699.) MTBE was detected during the first testing for MTBE at this site, at concentrations of 280,000 ppb in 1997. (BES-MDL-NJ-009110.) In 1998, an additional release occurred, causing contamination of soil and groundwater (NJDEP-SITE595-005659-005677.) MTBE has been detected at levels as high as 1,400,000 ppb in 2005. (*Id.*)

In 2001, high levels of contamination were found on site and at other nearby properties, including a potable well used for residential purposes (Tortorice well). Sampling from 2001 found high levels of contamination that had infiltrated the Tortrice well through a crack in the casing. (NJDEP-SITE595-002678-002696.)

10. HP Delta: Site ID No. 41958.

Getty had a branding agreement with this station, and owned the USTs at the station, prior to 1987. (Deposition of Robert Melecci, taken in *HP Delta v. Melecci*, Middlesex County Superior Court, Case No. MID-L-7781-07, on November 24, 2008 ("Melecci Depo.") at 15:24-17:24; 20:16-24.) Getty provided MTBE gasoline to the station during this time period. (*Id.*) Texaco had a branding agreement with this station

between 1988 and 1991. (Melecci Depo. at 22:21-24; 28:19-23.) Texaco provided MTBE gasoline to this station during this time period. (*Id.*)

BP had a branding agreement with this station between 1991 and 1999. (Melecci Depo. at 29:10-21.) BP provided MTBE gasoline to the station during this time period. (*Id.*)

CITGO through its agent had a branding agreement with this site from 1999 to 2003. (CITGO Response to Plaintiffs' Second Interrogatories, No. 5; Melecci Depo. at 30:3-9.) CITGO supplied MTBE gasoline to the station during this time period.

MTBE was detected at concentrations of 41,900 ppb during the first testing for MTBE at this site in 2006. (NJDEP-SS-Email-GLipsius-00005553.) MTBE has been detected at levels as high as 253,000 ppb in 2007. (NJDEP-SITE233-002620.)

In 2006 groundwater samples were collected from an existing tank field observation well, from soil borings, from a temporary well point and from the onsite potable well. The project manager concluded that a former tank field that was up-gradient of the existing tank field had contributed to contamination at the down-gradient existing tank field. (NJDEP-SITE233-008308-008399.)

Defendants' Trial Sites:

1. Tinton Falls Boro DPW Facility: Site ID No. 4215.

Plaintiffs' investigation is continuing as to the sources of gasoline released at site. Plaintiffs believe that Defendants have not been fully forthcoming in their responses as to this site. Plaintiffs are still evaluating those responses, and defendants' response to